

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 580 Department or Agency Alabama Department of Mental Health

Rule No. 580-5-30-.14

Rule Title: Eligibility and Level of Care Determinations for Medicaid Waiver Programs

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? NO

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have an economic impact? NO If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer Debbie J. Powell

Date 9/18/20

Alabama Department of Mental Health

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Mental Health

RULE NO. & TITLE: 580-5-30-.14 Eligibility and Level of Care Determinations for Medicaid Waiver Programs

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The Developmental Disabilities Division of the Alabama Department of Mental Health proposes to amend Chapter 580-5-30, Intellectual Disabilities Services, and repeal Chapter 580-5-33, Administrative and Support Requirements for Community Providers of Intellectual Disabilities Services. These proposed changes are intended to streamline and consolidate requirements and replace language deemed outdated and inappropriate current professional standards of practice. All requirements recommended for deletion from the Administrative Code shall be adopted in ADMH Policies and/or in DDD Operational Procedures as appropriate.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments in writing to Debbie Popwell, Director, Office of Certification Administration, Alabama Department of Mental Health, 100 North Union Street, Suite 540, Montgomery, Alabama 36130 by mail or in person or by electronic means to Debbie.popwell@adms.alabama.gov until and including November 4, 2020. Persons wishing to submit data, views, or arguments orally should contact Ms. Popwell by telephone at (334) 353-2069 during this period to arrange for an appointment.

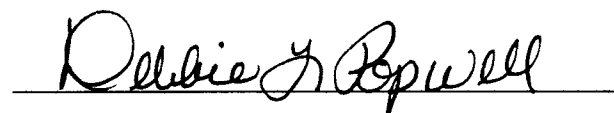
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 4, 2020

CONTACT PERSON AT AGENCY:

Persons wishing a copy of the proposed may contact Debbie Popwell, Department of Mental Health, 100 North Union Street, Suite 540, Montgomery, Alabama 36130.

(334) 353-2069

A copy of the proposed change is available on the department's website at <http://mh.alabama.gov>. Click on Provider Portal and then Certification to find code with changes.



(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

580-5-30.14 Freedom of Choice; DMH Medicaid Waiver**Eligibility And Level Of Care Determinations For Medicaid Waiver Programs.**

~~The Division of Developmental Disabilities shall assure that each individual and their guardian or legally authorized representative are given a freedom of choice of individuals or entities from which to receive services. Freedom of choice of provider is an essential right of individuals and their families as required by federal Medicaid regulations and is upheld by the support coordination agency.~~

~~(1) The designated support coordination agency serving each county shall ensure that individuals and their family are provided with adequate information about all services, settings and providers of services from which to base their choice(s), and that their choice is unhindered by coercion or manipulation arising from conflict of interest.~~

~~(2) A Freedom of Choice of Provider form, signed by the individual and/or his family/guardian after being provided with information about all potential services, settings and providers of services/supports, is required to be completed for each initial application submitted by the support coordination service agency.~~

~~(3) Regional Community Service Offices shall monitor the freedom of choice of provider provisions, shall accept appeals, and shall investigate complaints regarding freedom of choice.~~

~~(4) Changing services, settings and providers requires a meeting of the individual's interdisciplinary team. If the individual and the team do not agree, the individual or the individual's family/guardian may appeal in writing to the Regional Community Service Office for a change of services, settings and providers. Exceptions may be granted in limited situations as approved by DMH Standards.~~

~~(5) If an individual and/or his family/guardian opt to change services, settings and/or providers, an orderly transition of the contractual arrangements must be made. State funding shall follow the individual to his/her new service provider unless there is evidence that individuals and/or families have been or are being solicited or pressured to change services, settings and/or providers. In this instance, DMH reserves the right to not transfer the funds to the receiving provider.~~

The AMA designates the DMH as the entity authorized to determine individuals' eligibility for participation in the Medicaid HCBS Waivers. Within the DMH, the oversight and monitoring of day to day operations of the Waiver programs are conducted by the DDD through its Central Office and its Regional Community Service Offices. Information

for eligibility determinations of individuals with intellectual disabilities for enrollment and continued participation in these programs is gathered by designated 310 Board and submitted to the appropriate DMH Regional Community Service Office as described in the DDD Operation Policy and Procedures.

(1) Definitions:

(a) ICAP (Inventory for Client and Agency Planning) - The standard functional assessment instrument used in the process of determining eligibility for the waiver programs. This commercial product will produce a three-page summary report known as the Compuscore. An eligibility assessment within DMH-DDD's electronic information system summarizes key information from the ICAP Compuscore, from which the Regional Office can determine the individual's level of care.

(b) Level of Care Evaluation (LOC) - The form required by the Waiver Programs to document that the applicant would otherwise be eligible for and require the LOC provided in an Intermediate Care Facility (ICF).

(c) Designated Support Coordination Entity - The entity or Regional Office designated by DMH in each county or group of counties responsible for coordinating waiver services and supports for individuals waiting for services.

(d) Criticality Summary - The assessment tool created by the Department to evaluate the criticality of an individual's need for services.

(e) Intellectual Disability - A preferred term for Mental Retardation. The use of this preferred term in the present context carries exactly the same clinical specifications that have been used to define Mental Retardation in the DMH Standards, programs and regulations of the Department in the past.

(f) Qualifying Psychological Evaluation - A psychological evaluation administered and interpreted by a qualified individual.

(2) Eligibility for the Waiver - Medicaid HCBS Waivers are approved only as cost-effective alternatives to institutional care that would otherwise be reimbursed by the Medicaid Program. The waivers operated by DMH are alternatives to a Medicaid reimbursed ICF. For eligibility requirements for HCBS waivers operated by DMH-DDD, refer to the Long-Term Care Waiver section of the AMA's website.

(a) In Alabama, eligibility for the waiver is determined in three steps. In the first step, preliminary eligibility is

determined so an individual's name can be added to a statewide waiting list. The second step occurs when the individual can be reached on the waiting list and it becomes his or her turn to be enrolled in the waiver. The third step occurs when the individual has been receiving services for a period no longer than one (1) year and his or her eligibility must be re-determined. Re-determination is required annually for as long as the individual receives services under the waiver.

(3) The Waiting List - The DMH maintains a statewide waiting list of individuals applying for services through the Medicaid waiver programs it administers under delegation of authority from the AMA. Applicants initially placed on the waiting list requires a determination of preliminary clinical eligibility as defined in the HCBS waiver. If an applicant is financially ineligible for Medicaid at the time of Waiver eligibility determination, the applicant may still be placed on the waiting list, so long as the intellectual disabilities and adaptive functioning criteria are met. However, the requirement of financial eligibility for Medicaid must be met in order to enter services from the waiting list.

Author: Division of Developmental Disabilities, DMH-

Statutory Authority: Code of Ala. 1975, §22-50-11.

History: New Rule: Filed January 17, 2011; effective February 21, 2012. **Amended:** Filed August 26, 2019; effective October 10, 2019. **Amended:** Filed September 18, 2020.